

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
PARCEL SELECT
PARCEL SELECT CONTRACT 44

Docket No. MC2021-42

COMPETITIVE PRODUCT PRICES
PARCEL SELECT CONTRACT 44 (MC2021-42)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2021-43

**USPS REQUEST TO ADD PARCEL SELECT CONTRACT 44
TO COMPETITIVE PRODUCT LIST AND
NOTICE OF FILING MATERIALS UNDER SEAL**
(December 7, 2020)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3020.30 et seq., and 39 C.F.R. § 3015.5, the United States Postal Service requests that Parcel Select Contract 44 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

Attachment A is a redacted version of the Governors' Decision, which includes the explanation and justification required by the Commission's rules. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification Schedule product list, with the additions underlined. Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3020.32. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1) and (3). Unredacted versions of the Governors' Decision, contract, and required cost and

revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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December 7, 2020

**ATTACHMENT A TO REQUEST
REDACTED GOVERNORS' DECISION**

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 19-1)

February 7, 2019

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes new prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to make all necessary regulatory filings with the Postal

Regulatory Commission. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established prices that will enable each agreement to cover at least 100 percent of the attributable costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegate(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a semi-annual basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives, as specified in the accompanying Management Analysis. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision supersedes previous Governors' Decisions setting classifications and rates not of general applicability for competitive products; however, prices and classifications established under those Decisions may continue to be offered until the expiration of their terms, and contractual option periods and extension provisions that are included in the existing and future agreements can continue to be exercised.

ORDER

In accordance with the foregoing Decision of the Governors, the new prices and terms set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement or other nonpublished rate and classification initiative is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of any necessary review by the Postal Regulatory Commission.

By The Governors:

A handwritten signature in cursive script, reading "Robert M. Duncan", is written over a horizontal line.

Robert M. Duncan

Chairman, Board of Governors

Attachment A

Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be [REDACTED]

[REDACTED]

The cost coverage for a product equals [REDACTED]

[REDACTED]

[REDACTED]

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Priority Mail Express, Parcel Return Service, Parcel Select, First-Class Package Service, First Class Package International Service, Commercial ePacket Service, Priority Mail International, Priority Mail Express International, International Priority Airmail, International Surface Air Lift, Inbound Parcel Post, Inbound Direct Entry, and Inbound EMS services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Prices

established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C. §3633(a)(3), which, as implemented by 39 C.F.R. § 3015.7(c), requires competitive products to contribute a minimum percentage to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise from 39 U.S.C. §3633(a)(1).

The Postal Service shall submit a semi-annual report to the Governors. The report shall include information on the cost coverage for each agreement or initiative that has been executed under the authority of Governors' Decision 19-1. Agreements classified as non-published rates or rate ranges may be reported as a collective grouping; all other agreements or initiatives are to be reported separately. The report shall also include cost coverage information on any agreements and nonpublished initiatives established under previous numbered Governors' Decisions and Resolutions.

**UNITED STATES POSTAL SERVICE
OFFICE OF THE BOARD OF GOVERNORS**

**CERTIFICATION OF GOVERNORS' VOTE ON
GOVERNORS' DECISION NO. 19-1**

Consistent with 39 USC 3632(a), I hereby certify that the following Governors
voted in favor of Governors' Decision No. 19-1:

Robert M. Duncan
David C. Williams



Michael J. Elston
Secretary of the Board of Governors (A)

7 February 2019

Date

**ATTACHMENT B TO REQUEST
REDACTED SHIPPING SERVICES CONTRACT**

SHIPPING SERVICES CONTRACT
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
REGARDING
PARCEL SELECT SERVICE

This contract for shipping services (this "Contract") is made by and between [REDACTED] a limited liability company organized and existing under the laws of [REDACTED] with its principal office at [REDACTED], on behalf of itself and its affiliates (collectively known as "Customer") and the United States Postal Service (the "Postal Service" or "USPS"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party." [REDACTED] attached hereto, which may be updated from time to time. "Affiliate" means any other entity that, directly or indirectly, controls, is controlled by, or is under common control with [REDACTED]

WHEREAS, it is the intention of the Parties to enter into a shipping services contract that will benefit the Postal Service, the postal system as a whole, and Customer, and its customers, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Terms

The following terms apply as of the effective date, as defined below:

- A. DMM. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the "Domestic Mail Manual" or "DMM" (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300_landing.htm) and of other postal laws and standards, including USPS Publication 52 – Hazardous, Restricted, and Perishable Mail, apply to mail tendered under this Contract.
- B. Contract Packages. This Contract applies to Customer's outbound packages of the following types (collectively "Contract Packages") :
 - 1. Parcel Select Lightweight Destination Delivery Unit ("DDU") entry packages [REDACTED] ("PSLW"); and

- [REDACTED]
2. Parcel Select pound rated DDU entry packages addressed to any Zip Code outlined in Attachment A ("PSH").

Contract Packages will be delivered by the Postal Service Monday through Saturday,

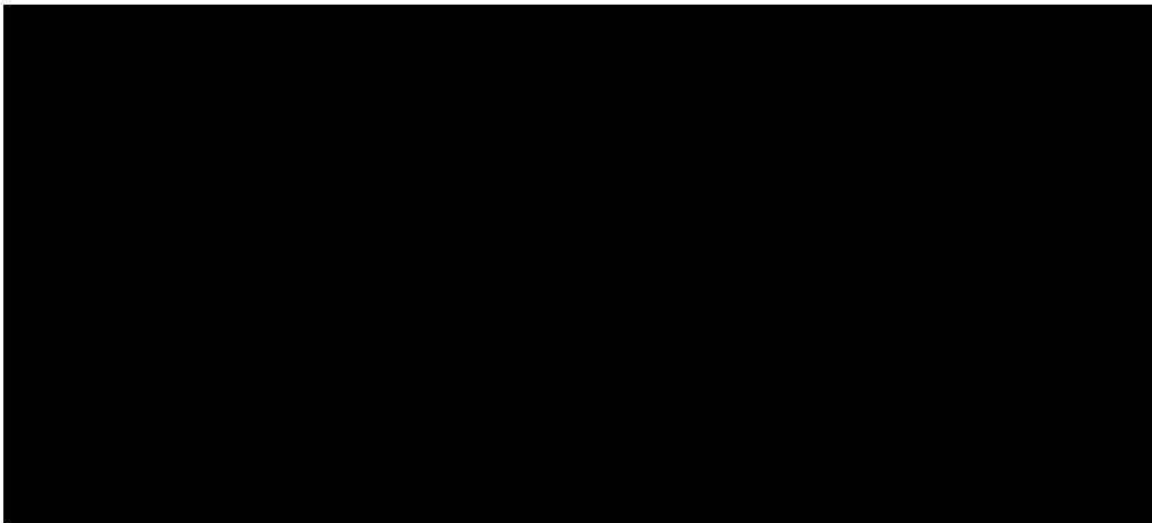
[REDACTED]

- C. Reselling. [REDACTED] Customer tendering packages to DDUs, Customer expressly commits to not offer, sell, or allow the use of Contract Pricing provided in this Contract to any other entity or party (i.e. "reselling"). Subject to the above exception, Customer will also not extend pricing to a third party under this Contract, including commercial published pricing for the products defined in Section I.B, or any prices below commercial published pricing. For the avoidance of doubt, a violation of this section will constitute a material breach of this Contract. This requirement may be waived in writing by the Postal Service.
- D. Manifest. Customer will manifest Contract Packages as specified by the Postal Service, using a separate permit number to ship such packages, and will use the Electronic Verification System ("eVS"), successor eVS system or other approved payment method directly with the Postal Service (without intermediaries or Third Party Payment vendors). For avoidance of doubt, Customer's packages shipped using a different pay method are not covered by this Contract and will not receive Contract Prices in this Contract. The Parties have mutually agreed to specific Customer Registration ID, Mailer ID and Payment Method information that must be associated with Contract Packages. Contract pricing for any newly approved payment methods will be effective within fifteen (15) business days after the Postal Service receives written notification from Customer. Only Contract Packages [REDACTED] and PSLW DDU packages shipped from authorized permits ("Total Parcel Select Volume") count toward the Annual Volume Target expressed in Section I.F below as well as all other volume measurements expressed in this Contract; provided that only Contract Packages will count towards the [REDACTED] in Section I.F below.

Customer's Contract Packages are [REDACTED]

[REDACTED]

- E. Contract Calendar. The terms and prices contained herein will take effect on the effective date as defined in Section II below. The "Contract Years" or "CYs" and "Contract Quarters" are defined in Table 1 below:



F. Annual and [REDACTED] Growth Targets:

1. Each year, Customer will endeavor to meet the following minimum annual growth targets for Customer's Total Parcel Select Volume ("Annual Growth Targets") and the [REDACTED] for Contract Packages for [REDACTED] (collectively the "Volume Targets").

The Annual Growth Target is agreed for Contract Year 1 pursuant to Table 2 below. [REDACTED]

[REDACTED] Customer has provided in accordance with the parameters set forth in Section I.F.3 below. Such documentation will follow the same format of Table 2 below.

| <i>Table 2</i> | | |
|-----------------------------|------------|---------------------|
| <i>Annual Growth Target</i> | | |
| <i>Year</i> | [REDACTED] | <i>Total Target</i> |
| <i>CY 1</i> | [REDACTED] | |

2. Notification Timing. During the Outer Years, in accordance with the below parameters, the [REDACTED] will be provided by Customer as follows: [REDACTED]
[REDACTED]. The Annual Growth Target will likewise be provided by Customer at least [REDACTED] prior to the beginning of the applicable Contract Year.¹

¹ For example, Customer will provide the [REDACTED] each year by [REDACTED] and the CY Annual Volume Target by [REDACTED].



3. Outer Years Minimum Annual and [REDACTED] Target Parameters. Beginning in CY2, each year, when Customer provides its Growth Targets, Customer will endeavor to target the following minimum amount of annual growth set forth in (i) below. Beginning in CY2, [REDACTED] must conform to the minimum parameter set forth in (ii) below, which will be used to calculate whether [REDACTED] are applied.

- i. The minimum Annual Growth Targets in any one Contract Year should be [REDACTED] the Total Parcel Select Volume Shipped during the prior twelve (12) month period ending [REDACTED] provided that no more than [REDACTED] after CY1, Customer will be entitled to Annual Growth Targets that are [REDACTED] than the Total Parcel Select Volume Shipped during the prior twelve (12) month period ending September 30th [REDACTED]. In order for Customer to declare a Contract Year as the [REDACTED] Customer must provide the Postal Service notice of its intention to do so no later than [REDACTED]. Notwithstanding, Customer may withdraw its declaration of the [REDACTED] provided that [REDACTED]

- ii. The [REDACTED] in any [REDACTED] are [REDACTED] of Contract Packages shipped [REDACTED] during the Same Period Last Year ("SPLY")³; provided that this parameter will not apply to [REDACTED] in the [REDACTED].

The volumes needed to achieve the minimum targets in this section may be adjusted pursuant to Sections I.N, I. K.2, I. K. 3 and Schedule 2 of this Contract.

² For example, the minimum Annual Growth Target for Contract Year 2 shall be [REDACTED] the Total Parcel Select Volume shipped during the period [REDACTED] through [REDACTED].

³ For example, the minimum [REDACTED] in CY3 shall be [REDACTED] the volume shipped [REDACTED] in CY2 [REDACTED], and the [REDACTED] in CY2 Q3 shall be [REDACTED] the volume shipped [REDACTED] in CY2 Q3.

[REDACTED]

G. Overall PSLW Mix Target. Beginning in 2021, out of Customer's Total Parcel Select Volume, no greater than [REDACTED] will be targeted as PSLW packages ("PSLW Mix Threshold").

H. Contract Surcharges. The following "Contract Surcharges" in this section are applicable to volume shipped during the Contract Years set forth below:

1. Overall PSLW Mix Surcharge. Customer's volume of PSLW packages as a proportion of Customer's Total Parcel Select Volume ("PSLW Mix") will be monitored on a quarterly basis by the Parties. Should Customer's PSLW Mix exceed the PSLW Mix Threshold in a given Contract Quarter [REDACTED]

[REDACTED], Customer will pay the Postal Service the difference between the prices paid and the prevailing published PSLW prices as of the date of the manifest for all PSLW packages ("PSLW Mix Surcharge") [REDACTED]; provided that if Customer's PSLW Mix in aggregate for [REDACTED] s [REDACTED] Customer will not be required to pay the PSLW Mix Surcharge [REDACTED]. For clarity, if a surcharge is imposed, such surcharge will only be applied to [REDACTED]

[REDACTED] The PSLW Mix Surcharge is the Postal Service's exclusive remedy for Customer exceeding the PSLW Mix Threshold.

The PSLW Mix Surcharge is applicable to volume shipped during [REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A by providing notice within 30 days of notification after the close of CY2Q1.

[REDACTED]

[REDACTED]

[REDACTED]

3. PSLW Surcharge Calculation Exception. In the event that Customer has an active Shipping Services Contract with the Postal Service for Parcel Select

[REDACTED]

4. Surcharge Order of Application. Surcharges pursuant to Section I.H for each Contract Quarter will be calculated separately in the event that the PSLW Mix

Threshold [REDACTED] and [REDACTED]

5. Notification and Payment of Surcharges. The Postal Service and Customer will calculate any surcharges pursuant to Section I.H after the close of each Contract Quarter. Payment of surcharges is due within [REDACTED] after the Parties have agreed on the total amount payable.
6. Waiver or Reduction of Surcharges. The Postal Service reserves the right at its sole discretion to waive or reduce any surcharges for any Contract Quarter pursuant to Section I.H.

I. Contract Pricing

1. Initial Pricing. From the effective date of this Contract [REDACTED] prices as illustrated in Exhibit 1 for its Contract Packages. From [REDACTED] thereafter, being the "Annual Rate Change Date") Customer will pay prices as illustrated in Exhibit 2 for its Contract Packages [REDACTED]

⁴ Example 1: [REDACTED]

Example 2: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- J. Forecasting. [REDACTED] Customer will provide the Postal Service (including via email) with a refreshed, non-binding [REDACTED] rolling forecast for the next [REDACTED], including both [REDACTED] (the "Rolling Forecast"). Such forecast is meant to estimate the amount of Total Parcel Select Volume Customer will tender in good faith, but is not a guarantee of the amount of Total Parcel Select Volume the Postal Service will receive. Customer will not deliberately over- or under-estimate the amount of Total Parcel Select Volume Customer will tender. For purposes of determining whether Customer exceeded forecasted volume as set forth in Section I. K. 2. A and B, the forecasted volume for a DDU will not change for a given delivery day [REDACTED] unless mutually agreed upon by the Parties.

If, over the course of the Contract, the Postal Service believes the forecast is not reasonably representative of the amount of Total Parcel Select Volume it is receiving on [REDACTED] level, the Postal Service and Customer will follow the Escalation; Meet and Confer procedures set forth in Section XX in order to identify ways to improve the forecast.

In addition, if the Postal Service is able to reasonably demonstrate that Customer's forecast has consistently and substantially over estimated beyond historical levels the amount of Contract Packages into a particular [REDACTED]

[REDACTED]

- K. Service Endeavors, Performance Measurement and [REDACTED]

1. Service Endeavors, Route Book and Same Day Delivery. Customer will endeavor to “successfully enter” its DDU packages according to a mutually agreed upon Ops MOU (as defined and set forth in Section 4 below), which documents the agreed times that Contract Packages must be tendered by Customer to each DDU in order to receive “same-day” (or, if mutually agreed, “next-day”) delivery. “On-time” means that a package was received by the recipient the same-day (or, if mutually agreed, the next-day after) the package was Successfully Entered. The portion of on-time packages of Total Parcel Select Volume with valid “Start-The-Clock” scans will be the “on-time %”. “Successfully Entered” is defined in Schedule 3 and the Ops MOU. The Parties will target [REDACTED] on-time delivery for Successfully Entered volume.

2. Measurement. Beginning with [REDACTED], on-time service performance will be measured continuously, but [REDACTED] may only occur if the Postal Service’s performance is lower than the “Performance Lever Rate” on a rolling [REDACTED] basis, excluding entries altogether where volume was not Successfully Entered.

[REDACTED] Performance measured on a quarterly basis will also exclude [REDACTED]

[REDACTED] Performance Lever Rates are as follows:

[REDACTED] for purposes of performance begins with [REDACTED]

[REDACTED] is defined as the remainder of the calendar year.

For purposes of determining whether the [REDACTED] Performance Lever Rates are met for the [REDACTED] and quarterly calculations in Sections I.K.2 and I.K.3, on-time service performance will be rounded to the nearest tenth of a percent by rounding only the first digit representing a fraction of a percent. For example, [REDACTED]

The applicable Performance Lever Rate for any rolling [REDACTED] or quarterly period with [REDACTED] days will be volume weight averaged for determining whether the rolling [REDACTED] and quarterly calculations in Section I.K.2 and I.K.3 are met. For clarity, to determine the volume weight averaged Performance Lever Rate for a rolling [REDACTED] that has [REDACTED] Days, the Total Parcel Select Volume Successfully Entered for delivery on [REDACTED] days will be multiplied by [REDACTED] and the Total Parcel Select Volume successfully entered for delivery on [REDACTED] s will be multiplied by [REDACTED]. To arrive at the volume adjusted Performance Lever Rate the sum of that calculation will then be divided

[REDACTED]

by the total number of Successfully Entered packages during the period in question. Likewise, to determine the volume weight averaged Performance Lever Rates applicable to Contract Quarter 1 which contains both [REDACTED] days, the Total Parcel Select Volume Successfully Entered for delivery on [REDACTED] days will be multiplied by [REDACTED] and the Total Parcel Select Volume Successfully Entered on [REDACTED] will be multiplied by [REDACTED]. To arrive at the volume adjusted Performance Lever Rates for [REDACTED] the sum of those calculations will then each be divided by the total number of Successfully Entered packages during the period in question.

Whether a package is on-time or not on time will be determined [REDACTED] data which includes "Start-The-Clock"

[REDACTED] and "Stop-The-Clock" scan events applicable to Contract Packages. Unless proven otherwise by the Postal Service, evidence of a "Start-The-Clock" scan code and lack of a "Stop-The-Clock" scan code will evidence a late delivery. Should the Postal Service believe the [REDACTED] or Scanning data is inaccurate, the Postal Service will provide reasonably prompt notice to Customer, and the Parties will follow the Escalation; Meet and Confer procedures set forth in Section XX to reconcile using available evidence. Should Customer [REDACTED] y [REDACTED]

[REDACTED] In addition, Customer will provide all data used for purposes of calculating quarterly on-time performance [REDACTED]

The following packages will be excluded from the performance calculation entirely for the applicable rolling [REDACTED] as well as the quarterly [REDACTED] periods set forth in Section I.K.3:

a.

[REDACTED]

b.

[REDACTED]

c.

If after a [REDACTED] period it is determined that the on-time service performance of Total Parcel Select Volume is less than the applicable Performance Lever Rate for packages addressed to ZIP Codes within a DDU's service area, then [REDACTED]

3. If after a quarterly period it is determined that the on-time service performance of Total Parcel Select Volume is less than the applicable Performance Lever Rate for packages [REDACTED], then Customer may reduce its future Volume Targets [REDACTED] as set forth below (Customer's resulting growth rates are its "Performance Adjusted Growth Rates").

Lever Rate

Lever Rate

for purposes of performance begins with

Period" is defined as the remainder of the calendar year.

⁶ The following hypothetical example is provided to illustrate how packages that are deemed shipped are used to determine whether [REDACTED] are achieved:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Mutually Agreed Operational Procedures

The Parties will adhere to mutually agreed upon Memorandum of Understanding regarding Operational Procedures (“Ops MOU”) as it pertains to Parcel Select ponderosa rated and PSLW packages.

[REDACTED]

Any modifications to the foundational terms and conditions contained in Schedule 3 will require an amendment to this Contract as well as the Ops MOU. Any revisions to non-foundational terms contained in the Ops MOU must be mutually agreed upon by

[REDACTED]

Directors of both Parties and then documented as an Amendment to the MOU prior to becoming effective.

L.

[REDACTED]

M.

[REDACTED]

N. Additional [REDACTED]. Attached as Schedule 2 to this Contract is a description of circumstances mutually agreed to by the Parties that will result in adjusting the calculation of the [REDACTED]. Any adjustments to the calculation of [REDACTED] will

⁷ For clarity, in this example, the calculation will begin again with Quarter C.

[REDACTED]

be calculated by the Parties and applied only as prescribed in Schedule 2. The Parties may modify Schedule 2 through written mutual agreement at any time.

- O. Quarterly Business Reviews. The Parties will, within thirty (30) calendar days after the conclusion of each full Calendar Quarter in each Contract Year, jointly conduct a business review of Customer's performance expectations under this Contract either in person, by telecom, or by webinar. [REDACTED]

[REDACTED] If either Party is unable to conduct a business review within thirty (30) calendar days after the conclusion of a Calendar Quarter it will notify the other Party in writing (i.e., email or U.S. mail) as provided in Section X below of that fact and propose a date as soon as practicable thereafter. While participation in the business review is encouraged during the term of the Contract, a lack of participation by either Party will not affect Customer's eligibility for the contract prices nor the volumes required for such Contract prices that may be set forth in Exhibit 1 or constitute a breach of this Contract.

- P. Record Keeping and Audit. Customer will respond to the Postal Service's or its designated auditor's quarterly and/or yearly transaction confirmations related to Postal Service transactions under this Contract; and such other assistance as required by the Postal Service or its designated auditors in connection with Customer's performance under this Contract.
- Q. If at any time a price determined by this Contract in a certain cell exceeds the published price for applicable service for that same cell, Customer will pay the published price for applicable service. If Customer has paid an amount in excess of the published rates for any applicable service designated by this agreement, the Postal Service will refund the difference between such Contract rates and published rates within forty-five (45) calendar days of one Party notifying the other Party of such payment discrepancy.

II. Regulatory Review and Effective Date

This Contract is subject to approval by the Postal Service senior management and/or the Governors of the Postal Service and the Postal Regulatory Commission (the "Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, and upon approval of the Postal Service Governors, the Postal Service will make required filings with the Commission. The effective date of this Contract will be three (3) business days following the day on which the Commission issues all necessary regulatory approvals. For purposes of this Contract, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed.

III. Expiration, Termination and Extension

A. Expiration, Termination. This Contract will begin on the effective date and continue until [REDACTED] unless:

- (1) terminated by either Party for convenience with at least [REDACTED] notice to the other Party in writing;
- (2) terminated upon written notice if the other Party breaches any material term of this Contract and fails to cure such breach within [REDACTED] days after receipt by the breaching Party of written notice from the non-breaching Party describing such breach. The right to terminate for cause will be in addition to and will not be in lieu of any other remedies available to the Parties hereunder or by law;
- (3) terminated at any time through written mutual agreement of the Parties;
- (4) renewed by mutual agreement in writing and subsequent approval by the Commission;
- (5) superseded by a subsequent contract between the Parties;
- (6) ordered terminated by the Postal Regulatory Commission;
- (7) ordered terminated by a court; or
- (8) otherwise required to comply with subsequently enacted legislation [REDACTED]

[REDACTED]

[REDACTED]

Notwithstanding the foregoing, [REDACTED]

[REDACTED]. Neither Party will be subject to any liability solely as a result of such Party exercising its termination rights under this Section III.

- B. Extension. If, at the conclusion of this Contract term, both Parties agree that a successor Shipping Services Contract is being negotiated, this Contract will be extended for up to [REDACTED] day periods with official notification to the Commission at least seven (7) calendar days prior to the Contract's expiration date. Upon both Parties agreement to the extension, the rate escalation clauses will be implemented as set forth in Section I.I, throughout the extension period.

IV. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal via email, along with any and all supporting documentation, within thirty (30) calendar days of receipt of notification of the determination giving rise to the appeal to: [REDACTED]. The appeal will be forwarded to the Pricing and Classification Service Center (PCSC). Customer does not waive any appeal rights provided by federal law or Postal Service regulations. The PCSC manager issues the final agency decision. Any decision that is not appealed as prescribed becomes the final agency decision. The foregoing appeal process applies only to the issues identified above that arise from implementation of this Contract.

V. Indemnification

- A. The Postal Service hereby releases and will hold harmless, and indemnify Customer, each of its affiliates, and the respective directors, officers, Personnel, successors and assigns of any of the foregoing, from and against any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees) arising out of or resulting from any third party allegation or claim based on or relating to (A) any personal injury, death, or property damage caused by an act or omission by the Postal Service, any of its affiliates, or any of the respective Personnel of any of the foregoing in connection with the provision of the services under this Contract, (B) any Postal Service breach of this Contract, or (C) gross negligence or willful misconduct of the Postal Service, any of its affiliates, or any of the respective Personnel of any of the foregoing (collectively, "Customer Indemnified Claims"). However, the foregoing does not apply to the extent such Customer Indemnified Claims result from Customer's negligence or willful misconduct. "Personnel" means the employees, contractors, subcontractors, agents and representatives of a person or entity.

- [REDACTED]
- B. Customer hereby releases and will hold harmless, and indemnify the Postal Service, each of its affiliates, and the respective directors, officers, Personnel, successors and assigns of any of the foregoing, from and against any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees) arising out of or resulting from any third party allegation or claim based on or relating to gross negligence or willful misconduct of Customer, any of its affiliates, or any of the respective Personnel of any of the foregoing in connection with the tender of Contract Packages under this Contract (collectively, "Postal Service Indemnified Claims" and, together with Customer Indemnified Claims, "Claims"). However, the foregoing does not apply to the extent such Postal Service Indemnified Claims result from the Postal Service's negligent or willful misconduct.
 - C. The obligations under this Section V are independent of all other obligations under this Contract. An indemnifying party will not consent to the entry of any judgment or enter into any settlement without the indemnified party's prior written consent, which may not be unreasonably withheld.

VI. Confidentiality

Neither Party will make public that the Parties have entered into a Contract or will make public the terms of this Contract, except to the extent required by law or as mutually agreed upon in writing by the Parties' duly authorized representatives (which in the case of Customer must be a Vice President). The Postal Service will request that the Commission, in executing its functions under the Act, not disclose: (1) the identity of Customer as a Party to this Contract, (2) the terms of this Contract, or (3) data supporting this Contract filed by the Postal Service, in accordance with the Commission's rules and practices, or data which could identify Customer.

The Parties agree that the terms and conditions of the Mutual Non-Disclosure Agreement between Customer and the Postal Service in effect as of the Effective Date (the "MNDA") are incorporated herein by reference and will apply to all Confidential Information (as defined in the MNDA and including but not limited to the pricing terms of this Contract and Customer's identity as a Party) disclosed by one Party to another.

Customer acknowledges that as part of securing approval of this Contract, the Contract and supporting documentation will be filed with the Postal Regulatory Commission in a docketed proceeding. The Postal Service will request from the Commission non-public treatment of information that the Postal Service deems to be eligible for protection from public disclosure when it files such material with the Commission, including Customer's identity, the terms of this Contract, and supporting data relating to postal costs, prices, and Customer's shipping profile. The Postal Service will redact such information from its public filing and provide Customer with such redacted document for review and comment prior to its filing. Unless disclosure of a matter relating to this Contract is required by applicable law, the form, substance, and timing of any press release or other public disclosure of such matter must be mutually agreed to by Customer and the Postal Service in writing. Consent to such disclosure may not be withheld unreasonably. When disclosure of a matter relating to this Contract is required by applicable

law, the disclosing Party must notify the non-disclosing Party, and the Parties will make reasonable efforts to cause a mutually agreeable disclosure to be issued.

Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in the Commission's docketed proceeding. Customer further understands that any unredacted portion of this Contract or supporting information will be available on the Commission's public website, www.prc.gov. The Postal Service will notify Customer of the docket number of the Commission proceeding once assigned. Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. Customer agrees to treat as confidential and not disclose to third parties absent express written consent by the Postal Service any information related to this Contract that is determined by the Commission to be non-public.

VII. Publicity

Except for disclosures by Customer to facilitate transactions with individual customers, third party sellers, vendors and other business relations in the ordinary course of business of shipping options or shipment status with respect to shipments to or from such business relations, neither Party may use the name, trademarks or logo of the other Party in any way (including in promotional material) without such Party's advance written permission.

VIII. Limitations of Liability

Neither Party is liable for indirect, special, or consequential damages or any loss of revenue, profits arising in connection with this Contract, even if it has been advised of the possibility of such damages. Further, neither Party's aggregate liability arising with respect to this Contract or the services provided hereunder will exceed, at any time, the total amounts paid or payable by Customer to the Postal Service pursuant to Section I.I, I.H, and I.L of this Contract during the previous twelve (12)-month period.

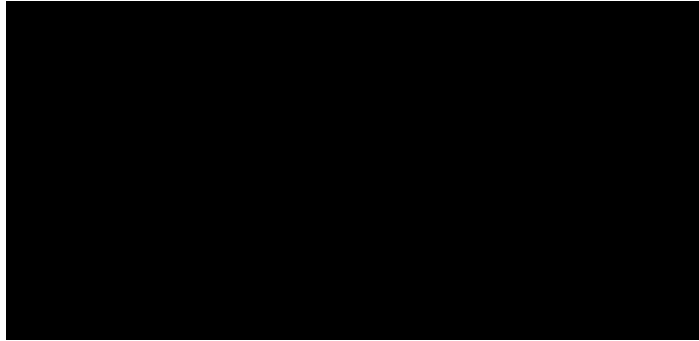
IX. Taxes

The Postal Service may charge and Customer will pay applicable national, state or local sales or use taxes or value added taxes that the Postal Service is legally obligated to charge ("Taxes"), provided that such Taxes are stated on the original invoice that the Postal Service provides to Customer and the Postal Service's invoices state such Taxes separately and meet the requirements for a valid tax invoice. Customer may provide the Postal Service with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, the Postal Service will not charge and or collect the Taxes covered by such certificate. Customer may deduct or withhold any taxes that Customer may be legally obligated to deduct or withhold from any amounts payable to the Postal Service under this Contract, and payment to the Postal Service as reduced by such deductions or withholdings will constitute full payment and settlement to the Postal Service of amounts payable under this Contract. Throughout the term of this Contract, the Postal Service will provide Customer with any forms, documents, or certifications as may be required for Customer to satisfy any information reporting or withholding tax obligations with respect to any payments under this Contract.

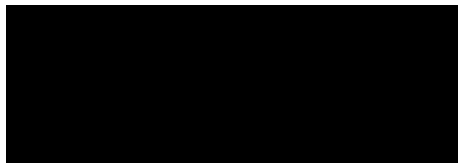
X. Notice

Any notice or other communication to be provided to a Party hereunder must be in writing and sent via certified mail (with return receipt requested) or by email to the individual and at the address listed below unless otherwise specified by the Party in writing. Notices will be deemed given when received by the Party.

If to the Postal Service, to:



If to the Customer, to:



XI. Governing Law; Consent to Jurisdiction

THE CONTRACT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH PRINCIPLES OF FEDERAL LAW; PROVIDED, THAT TO THE EXTENT FEDERAL LAW DOES NOT APPLY, THE INTERNAL LAWS OF [REDACTED], EXCLUDING ITS CONFLICTS OF LAW RULES, WILL APPLY. With respect to any suit, action or other proceedings relating to the Contract, the Postal Service and Customer each irrevocably (a) submit to the exclusive personal jurisdiction and venue in the federal courts in [REDACTED] and (b) waive any objection that it may have at any time to the laying of venue of any proceedings brought in such court, waive any claim that such proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such proceedings, that such court does not have personal jurisdiction over such Party.

XII. Force Majeure

Neither Party will be liable for delays or failure to perform under this Contract if due to any cause or conditions beyond its reasonable control, including delays or failures due to acts of God, natural disasters, acts of civil or military authority, fire, flood, earthquake, wars, utility disruptions (shortage of power), judicial or governmental action, that Party will be excused from such to the extent that it is prevented, hindered or delayed by such causes; provided that the Party whose performance or attempts to cure is delayed or prevented gives the other Party written



notice thereof within five (5) business days of any such event or occurrence and exercises its best efforts to resume performance or cure as soon as possible.

XIII. Construction

The headings of the Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Contract. All Section and Exhibit references in this Contract are to Sections and Exhibits, respectively, of or to this Contract unless specified otherwise. Unless expressly stated otherwise, when used in this Contract the word “including” means “including but not limited to”. If any provision of this Contract is determined to be unenforceable in any jurisdiction, the Parties intend that this Contract be enforced in such jurisdiction as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced in such jurisdiction to the extent that they are enforceable, and further agree to substitute for the invalid provision a valid provision (with respect to such jurisdiction) which most closely approximates the intent and economic effect of the invalid provisions. The Parties have participated jointly in the negotiation and drafting of this Contract. If an ambiguity or question of intent or interpretation arises, this Contract will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise or disfavor any Party by virtue of the authorship of any provisions of this Contract.

XIV. Third Party Beneficiaries

This Contract will be binding upon the Parties hereto and their respective permitted assigns and successors in interest and will inure solely to the benefit of such Parties and their respective permitted assigns and successors in interest, and no other Person.

XV. Relationship

Nothing in this Contract will be deemed or construed as creating a joint venture or partnership between the Parties. Neither Party is by virtue of this Contract authorized as an agent, employee, or legal representative of the other Party, and the relationship of the Parties is, and at all times will continue to be, that of independent contractors.

XVI. Amendments

This Contract will not be amended except expressly, in writing, by authorized representatives of the Parties.

XVII. Assignment

Neither Party may assign its rights under this Contract or, delegate its obligations hereunder, without the prior consent of the other, such consent is not to be unreasonably withheld. Notwithstanding the foregoing, Customer may assign this Contract without the Postal Service’s consent to any of its affiliates, or any entity in connection with a merger, sale of all or substantially all of the assets, or other similar transaction involving Customer. Customer will

[REDACTED]

provide notice to the Postal Service promptly following any such assignment. If necessary to maintain compliance with Commission approval or requirements following any such assignment, the Parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

XVIII. Waiver

Any waiver by a Party will not constitute a waiver for any future occurrence. No waiver will be valid unless set forth in writing executed by the Party waiving such provision.

XIX. Counterparts

The Contract may be executed in any number of counterparts, all of which taken together will constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart will be deemed to be an original signature. The Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.

XX. Escalation; Meet and Confer Procedures

The Parties will resolve any dispute in relation to any aspect of, or failure to agree any matter arising in relation to, the Contract (a "Dispute") by attempting to resolve it as follows. During the dispute resolution process, any material changes or charges related to the Dispute will be suspended until such Dispute is resolved:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notwithstanding the above or anything to the contrary in the Contract, nothing will preclude more rapid or alternative remedies being sought by either Party and, in particular, either Party will be entitled at any time to seek injunctive or urgent relief in connection with the Contract.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the later date below:

UNITED STATES POSTAL SERVICE

Signed by: DocuSigned by: Jacqueline Krage Strako CFB3805DEFA2408...

Printed Name: Jacqueline Krage Strako

Title: Chief Commerce and Business Solutions Officer and Executive Vice President

Date: November 25, 2020

[REDACTED]

Attachment A – [REDACTED]

Attachment B- [REDACTED]

Attachment C - [REDACTED]

Exhibit 1 – Pricing [REDACTED]

Exhibit 2 - Pricing [REDACTED]

Exhibit 3 – Pricing [REDACTED]

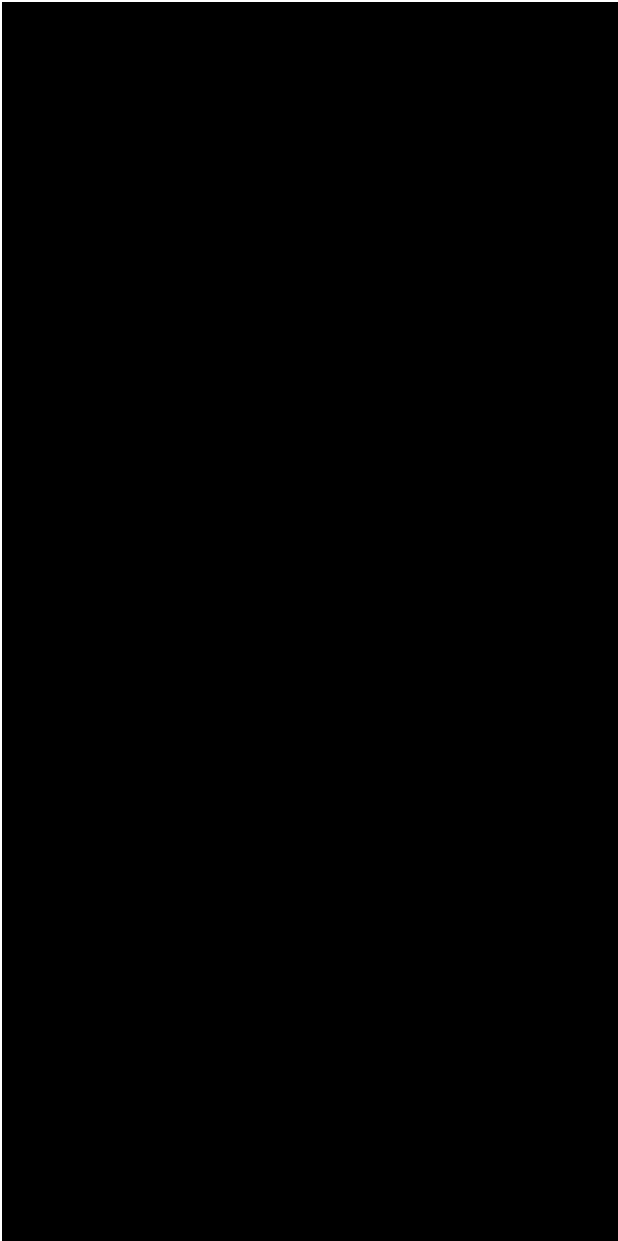
Schedule 1 – [REDACTED]

Schedule 2 – [REDACTED]

Schedule 3 – Foundational Ops MOU Terms

[Redacted]

Schedule 1 – [Redacted]

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[REDACTED]

Schedule 2 – [REDACTED]

[REDACTED]

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Schedule 3 – Foundational Ops MOU Terms

Routebook and Drop Window Parameters.

The Parties agree that packages that are Successfully Entered in accordance with this Ops MOU

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

NEGOTIATED SERVICE AGREEMENTS

Domestic

Parcel Select Contract 44

Statement of Supporting Justification

I, Shibani S. Gambhir, Director, Field Sales Strategy and Contracts, am sponsoring this request that the Commission add Parcel Select Contract 44 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).*

Not applicable. The Postal Service is proposing that this Parcel Select contract be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The contract sets specific terms and conditions for providing Parcel Select service to the customer. Parcel Select service is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Parcel Select service in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.*

I am advised that merchandise sent by Parcel Select service and this contract are not covered by these provisions. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Expedited shipping, similar to Parcel Select service, is widely available from well-known and successful private firms at both published and contract prices.

- (g) *Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.*

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

Certification of Prices for Parcel Select Contract 44

I, Nan K. McKenzie, Manager, Pricing Innovation, Finance Department, am familiar with the prices and terms for Parcel Select Contract 44. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 19-1).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

**Nan K.
McKenzie**

Nan K. McKenzie

Digitally signed by Nan K. McKenzie
DN: cn=Nan K. McKenzie, o,
ou=Manager, Pricing Innovation,
email=nan.k.mckenzie@usps.gov, c=US
Date: 2020.12.07 13:04:05 -05'00'

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3007, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.201(b), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).¹ Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).² Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

- (2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information is sensitive and should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is Elizabeth.A.Reed@usps.gov and whose telephone number is 202-268-3179.

- (3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue,**

² The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

The Governors' Decision establishing Domestic Competitive contracts, including those for Parcel Select service, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

(6) The extent of the protection from public disclosure alleged to be necessary.

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

(8) Any other relevant factors or reasons to support the application.

None.